

SUPPLEMENT NOS. 2–3 TO PART 716
[RESERVED]

PART 717—CWC CLARIFICATION PROCEDURES (CONSULTATIONS AND CHALLENGE INSPECTIONS)

Sec.

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AUTHORITY: 22 U.S.C. 6701 *et seq.*, 2681; E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199.

SOURCE: 71 FR 24929, Apr. 27, 2006, unless otherwise noted.

§ 717.1 Clarification procedures; challenge inspection requests pursuant to Article IX of the Convention.

(a) Article IX of the Convention sets forth procedures for clarification, between States Parties, of issues about compliance with the Convention. States Parties may attempt to resolve such issues through consultation between themselves or through the Organization for the Prohibition of Chemical Weapons (OPCW). A State Party may also request the OPCW to conduct an on-site challenge inspection of any facility or location in the territory or in any other place under the jurisdiction or control of any other State Party. Such an on-site challenge inspection request shall be for the sole purpose of clarifying and resolving any questions concerning possible non-compliance with the Convention.

(b) In the event that BIS receives a request for clarification, pursuant to Article IX of the Convention, concerning possible non-compliance with the CWC, any person or facility subject to the CWCR (parts 710 through 729 of this subchapter) that receives an official written request from BIS for clarification must, within five working days from receipt of such request, provide BIS with any relevant information required to respond to the OPCW or the State Party(ies) who requested clarification under Article IX. BIS will contact the person or facility subject to the Article IX clarification, as early as practicable, prior to issuing an official

written request for clarification to the person or facility.

§ 717.2 Challenge inspections.

Persons or facilities, other than U.S. Government facilities as defined in § 710.2(a) of the CWCR, may be subject to a challenge inspection by the OPCW concerning possible non-compliance with the requirements of the Convention, irrespective of whether or not they are required to submit declarations or reports under the CWCR. BIS will host and escort the international Inspection Team for challenge inspections in the United States of such persons or facilities.

(a) *Consent to challenge inspections; warrants for challenge inspections.* (1) The owner, operator, occupant or agent in charge of a facility may consent to a challenge inspection. The individual giving consent on behalf of the facility represents that he or she has the authority to make this decision for the facility. The facility must respond to the notice of inspection, which includes within it a request for consent to the inspection, within four hours of the facility's receipt of the notice of inspection from BIS.

(2) In instances where the owner, operator, occupant or agent in charge of a facility does not consent to a challenge inspection, BIS will assist the Department of Justice in seeking a criminal warrant as provided by the Act. The existence of a facility agreement does not in any way limit the right of the operator of the facility to withhold consent to a challenge inspection request.

(b) *Notice of challenge inspection.* Challenge inspections may be made only upon issuance of written notice by the United States National Authority (USNA) to the owner and to the operator, occupant or agent in charge of the premises. BIS will provide notice of inspection to the inspection point of contact at such time that a person or facility has been clearly established, if possible, and when notification is deemed appropriate. If the United States is unable to provide actual written notice to the owner and to the operator, occupant or agent in charge, BIS (or another appropriate agency, if